Aligning Federal Rental Policy: Opportunities to Administratively Improve the Overlap of Federal Rental Funding Streams July 7, 2010

Welcome and Purpose of Event

- To hear practitioners' input and guidance on harmonizing programs across agencies
- To help produce, maintain programs over time
- Help us understand what is working and what is not working
- We are committed to taking what we hear and bringing the ideas back to the working group in an attempt to align
- Discussions should focus on where there are similarities and differences between programs and the implications of making changes
- Discussion should not focus on reaching consensus or providing specific changes to be implemented

Development and Operations Breakout Session 1
Tenant Rules—David Lipsetz

Overarching themes:

- Many points of inconsistency between program regulations
  - Especially difficult in mixed finance housing, siloed effect within region and even within the actual project (Section 8 on one floor, tax credits on another, HOPE VI on another)
- Need to reduce redundancy
- Need to integrate professional standards

Specific areas of discrepancies where alignment is needed:

- Occupancy standards
  - Bedroom Size rules are different
  - Transfer policies
  - Waiting List
  - What can be waived – criminal history
  - Definition of Elderly
  - Definitions of Disability
  - Medical Marijuana
  - Students
  - Limited English Proficiency (LEP) tenants
  - Pets
  - Whose income counts
- Leases and documentation
  - Certification forms are all different, between programs and between states
  - Security Deposits
  - Lease Addendum to HUD lease needed for Tax Credit programs. Addendum has to be approved by HUD which causes delay.
    - Is a blanket addendum possible?
    - Approval of addendums vary by field offices/region
  - Damage amounts can vary
  - Required notices to tenants – can they be combined?
  - Recertification schedules: Project based allows interim recertifications, PHAs have option to do interim recertifications, SEVRA has proposed recertifying every 3 years for a fixed income tenant, RD and Tax Credit will still have to do annual
  - Who can see 3rd party verification forms
  - Reporting varies by frequency, to whom, and at what intervals
- Systems
  - Each funding has a different system: PIC, TRACS, RD
  - Some local authorities have their own systems in addition to this

- HHS computer matching limited by social security act
- Systems ask for different levels of detail
- Need to answer in a way that satisfies the computer
- Instantly in effect changes are difficult for staff to keep up with
- Laws about privacy, who can see what, sometimes have to pretend to not have seen or ignore information when data sharing is enabled because of privacy reqs

- Income and rent setting
    - Different rent structures in the same building depending on when the apartment came online
    - Waiting lists
    - Minimum rent reqs: Project based - $25, Public Housing - $0 - $50
        - 30 day window to verify hardship claims can be taxing on family
    - Income percent requirements and minimum rent requirements can be at odds
    - AMI various income limits, between 30 and 50
    - Gross Income used for Tax Credits eligibility, Adjusted Income used for HUD and RD eligibility
    - Can have different rent structure in the same building
    - HERA limits (statutory) – trying to solve one problem created many new problems
    - Enterprise Income Verification (EIV)
        - who can see EIV information. HUD programs allowed, Tax Credit and RD not allowed. Manager has to pretend not to see or know about EIV results. Statutory via Social Security Act
        - Same tenant could have two different incomes, one based on EIV and the other based on traditional third party verifications
        - Use of EIV in HUD properties makes streamlining of certification forms across programs not possible without a change to statute or to remove HUD EIV regulation altogether
        - Could mean there are multiple forms for the same person that say different income levels
- Utilities
    - not statutory, can be changed more easily
    - Can uniform factor be used?
    - Zero income tenants profit from their reimbursement checks
    - Allowances are set differently for public vs. project base
    - Established per building
    - Hard to get data from utility companies and borrowers can't get the info

Places where alignment isn't needed (or not immediately):

- Preferences
    - Preferences are different but they work well being different
    - Can be set locally
- Grievances Procedures
    - Public Housing Authorities have higher standards
    - hearings vs. meetings on program entrance discrepancies
    - Different rules for each program but the differences are necessary and work well

Most critical to be addressed soon:

- Utilities
- Reporting forms
- Certification processes

Underwriting—Laurence Anderson

Specific areas of discrepancies where alignment is needed:

- Underwriting
    - 'Use restrictions' need to reflect what happens when and if the subsidy disappears, if dependent on subsidy.
    - Uniform DCR.
    - Need consistent method for calculating DCR between RD/HUD /& State HFA to be used by all

  - Fannie – benchmarks scenario – 'art to underwriting'.
  - Lenders could set their own DCR but there should be one standard baseline / shared on how DCRs are calculated.
  - Published methodology for how DCR is set.
  - Look at how IRS looks at federal loans and how they affect basis.
  - Need to develop standard underwriting criteria.
  - Need to underwrite as one – developers using different numbers for each application.
  - Need to include better definition and type of funding sources.
- Subsidy Layering Review
  - Reviews take too long; timing is off; the reviews don't make sense.
  - Delays are due to other lenders wanting to see what each lender does.
  - Within HUD, reviews done differently depending on program and there is statutory language requiring these reviews.
  - There is no correlation between the amounts of funds provided by agency.
  - Spending time to satisfy RD requirements when they have the lesser of the funds in the deal.
  - Every funder wants to be the last one in; they want to be sure everyone is in for exact amount.
  - Need to hold a 'come to Jesus' meeting where all funders agree on what funds each group will bring to the deal.
  - Define commitment.
  - Do funds need to be awarded, applied for, or what?
  - Give state people the power to make the decision.
  - HERA had requirements to provide lessons learned, were these requirements analyzed???
  - Need funders to make their decision together.
  - Review subsidy layering statute to see if there is still merit to the subsidy layering review. HUD or state agency staff to do subsidy layering training – training cross programs.
- Construction costs (energy green, amenities).
  - All agencies need to understand these are good for new construction but should be different criteria for rehab deals (<u>different set of standards</u>).
  - Retro fitting – solar – virtually impossible to get investors to approve.
  - None of the programs seem to work very well with retrofit.
  - Need to make the programs work better together.
  - Representatives from DOE, local utilities should be at these meetings.
  - Green in rural can be very different than in the urban areas.
  - Green evolving faster than reg can be written.
  - Defer to current standards. Possible to look at different sources & uses.
  - If RD is not paying for the rehab, perhaps RD doesn't need to be involved.
  - Identify lead agency.
  - Could look at % of funds in deal or other criteria.
  - RD/HUD could be involved in 'advisory' role.
  - Need green standards
  - Many different standards/types; more thought should be put into what standard is best or should be used.
  - More education and what different standards are; federal programs need to look at 'options'.
- Environmental
  - Criteria are often times in conflict with 'green'.
  - Combine environmental reviews.
  - Today, each funder does their own.
  - Need standard requirements for environmental reviews be developed so the reviews can be used by all.
  - Helpful to have more background in housing so they understand why things can't be changed.
- Davis Bacon Wage Rates
  - Davis Bacon requirement raises costs, triggered by the number of units the funds are used on.
  - Need standardized frequency in setting these.
  - Compare HOME requirements and CDBG requirements.

- Allowable amenities
    - Some programs allow amenities while others don't; amenities tend to drive up the cost.
    - Mod rehab –versus gut rehab; costs are different.
    - State published QAPs award points for market type amenities.
    - Older 515s didn't allow some of the amenities such as swimming pools, dishwashers, and garages.
    - HUD 202 programs do not allow balconies to be built.
    - HUD/RD has very rigid standards.
    - Would like broader underwriting standards to allow flexibility.
    - Questioned why HUD/RD need to be involved in the underwriting when using tax credits or other funding.
    - Defer to the states and the State allocating agency? HUD/RD could be involved in an 'advisory role' to meet federal requirements.
- Cost controls
    - Limits on developer fees and construction mark ups.
    - RD doesn't allow a developer fee but maybe a developer fee from loan funds is necessary
    - Across the board you don't see how the affordable housing industry really operates.
    - In federal programs, you don't have the investor requirements that they have now. "Higher cost and higher risk."
    - Difference of treatment between non-profits and full profits.
    - Look at how a non-profit can be treated more equitably. Level the playing field between non profits and full/limited profits.
    - Non-profits want access to some cash flow/residuals.
    - Financial viability of the project and the sponsor is important and don't care if they are non-profit or full-profit.
    - Need to treat all applicants the same regardless whether they are non-profit or full-profit for developer fees, RTOs, etc.
- Residual Receipts (cash flow that accumulates over time).
    - Have developers plan for and receive cash flow; time and process for getting these funds released is always very long.
    - Need clear explanation of what residuals can be used for
    - Uniform DCR. Need consistent method for calculating DCR.
    - RD/HUD /State HFA– standard DCR to be used by all.
- Capital Needs Assessment (CNA)/Physical Needs Assessment (PNA)
    - Standard CNA/PNA report/requirement across all agencies and require a certification from anyone proposing/doing CNAs.
    - Inconsistencies on how CNAs/PNAs are used and implemented on acquisition/rehab.
    - Lead review by lender. Sped up reviews will save time.
    - Federal government should lay some ground work and then let the lead agency follow it. Leadership could be by % of dollars in deal.
    - Need standards/best practices – this is not where the state agency should take the lead.
    - FHA could adopt a minimum or excellent standard –could administratively do this.
    - Need to develop standard requirements for CNAs and require a certification from anyone conducting CNAs. Set standards for all CNA Providers.
- Appraisals
    - RD appraisal requirements are different than HFA.
        - Agreed upon standards, CG standards.
    - Need to develop standard, agreed upon standards for all appraisals, and require lender to certify to the quality – 'warranty work by the lender!' Standardize the methodology used when calculating multiple values.
    - Appraisals/Market Study/CNA – wasting money when we need to contract for 5 different values and the agency may or may not use the values.
- Market Study
    - HFAs have a uniform set of standards; different from HUD/RD.

  - Some states/agencies require an appraiser to do a market study.
  - No institute for market studies like there are appraisers
  - Should create a system where market analysts have to meet certain criteria similar to what appraisers need to meet.
  - Need to standardize requirements for market study's and market analysts.
  - Environmental Reviews - -- accept.
  - Length of income restriction – Safe Harbor, that new RUC is OK.
- Allowable disposition criteria
  - Secretary's consent is required.
  - Secretary must make a finding that the sale is going to be at least as favorable for the tenant as the first sale.
  - Need to allow property's to be assumed before rehab is done rather than have the rehab done before they can acquire.
  - Government needs to look at the new owner rather than looking at a bad owner and what he/she did wrong.
- Architectural Plan Review –
  - HUD staff would no longer review plans/spec except for accessibility. Depends on who the architect is and what is required. Different requirements depending on what HUD/RD office you work with.
  - Work together on reviews/inspections
  - Pay for redesigns if needed and fully disclosed – meet federal standards
- Supportive Services
  - Statutory issue for RD can provide space but can't allow project funds to pay for the services.
  - Allow RD properties to pay for supportive services.
- Project Reserves
  - HFAs have a minimum per unit published in the QAPs
  - Countersignature – who needs to sign withdrawals, RD, HFA, etc –
  - Properties can't earn enough NOI to fund the reserve and still meet the DCR.
  - Look at if we can recognize reserves as allowable expense before calculating the DCR

Big Issues:

- CNA-standard guidance
- Revitalization – funding is critical; can't revitalize without funds.
- Procedural approach – how should an issue be handled.
- Use agreement – underlying principles. How to facilitate when multiple RUPs required.
- Are all agency requirements necessary – each agency is very vested in their way of doing things.

Development and Operations Breakout Session 2
Project Servicing/Financing—Bob Iber

Specific areas of discrepancies where alignment is needed

- Work out plans
  - Lack of clarification by HUD & RD, need clear guidance and maybe separate staff
  - Don't know when eligible for WOP
  - Need new authority to recast – restructure old deals
  - Loss Mitigation
    - Default HAPs/HAP Non-compliance
      - need early intervention with local government, short of abatement
    - Temporary Regulatory Relief
      - Age and income waivers
      - Need clear and reasonable guidelines
    - Shared Responsibility – "Less Gotcha"
      - Field offices/ agencies tend to behave punitively towards issues
      - More training/direction for employees
      - Identify underlying problems, separate owner from property where appropriate

        - Added authority to restructure new vs. the old
- Accelerations
    - What are the terms
    - Need to collaborate with partners to facilitate correct of problem
    - Change in ownership – getting syndicators/ lp/local gov. before acceleration
    - Training is needed of HUD & RD staff as to options available, role of LP/Local gov
- Subordination requirements
    - Obstacle: Ability to subordinate secondary debt w. FHA First and 202/811
    - RD- Needs clear and consistent policy w. ARRA funds
    - Rights of subordinate lenders participation
- Default/repayment terms
    - Simultaneous FHA note and property sale to local government to secondary position
    - Remove city as impediment?
    - Appraisal must be gone through
- Restoration requirements – priority, decision to rebuild
    - Tax credits motivations to rebuild
    - LITCH sensitivity by agencies
    - Use Agreement/ Section 8 affordability
    - Timely decision
- Opt Out Prevention
    - Coordinate/ Collaborate w. new requirements and agencies Prepayment prevention
    - Go to Congress for funding
    - As part of preservation – recapitalization
    - Waive prepayment requirement for preservation transaction
    - RD – statutory issues – have to offer incentive
    - HUD – issue guidance on Wellstone issue – look at bottom line preservation
- Post prepayment tenant protection
    - RD – voucher program
        - Look at Section 8 appropriation language
        - Need to make similar program – possible let HUD run the program using their enhanced voucher program
        - Overhanging restrictions
        - Use restrictions – acknowledge building's useful life
- Inspections
    - Frequency
    - Show all parties / multiple requirements
    - Cure – one standard – with a lead agency
- Hope VI – look at the whole list of tools
- People just seem to want to administer documents
- Recasting – need specific tools & specific skill set

Project Supervision and Operations Compliance— Laurence Anderson

Specific areas of discrepancies where alignment is needed:

- Added Compliance Costs / monitoring fees
    - Compliance costs – actual annual costs that must be paid. Rents are not sufficient. Allowed or affordable within rents.
    - Can compliance costs include supportive services – got points for providing supportive services so if don't provide in noncompliance???
    - Tax credit, investor, and some localities charge security costs.
    - Could broaden allowance to all costs within the maximum allowable rents.
    - Small properties – consider waiving the cost of the audit as there is minimum risk to the government.
    - Set aside costs up front. Monitoring costs are advantageous to the government as the reports are being done by an agency, and provide a level of assurance for the federal government.

    - Reduce up front costs by the funder level – reduce duplication costs at funder level.
- Annual site inspections/supervisory visits/REAC scores
    - Too many too often
    - For the administrator of the funding source, mixed flexibility. Flexibility on the HFA side for every 3 years but none on the HOME side.
    - HOME requires an inspection based on a % of unit.
    - An HFA /owner will be penalized if they leverage with multiple funding sources where we only need to visit every 3 years; HOME funds, regardless of dollars, requires a visit every year.
    - HERA allowed streamlining of insured properties
        - HUD refused to implement.
        - HUD has a fiduciary responsibility and cannot use another's inspection, will do the inspections themselves
        - HUD wants NCHSA to survey all members to find out what their inspection protocol is so that HUD can see if this is acceptable.
        - HUD has not implemented a provision of HERA nationwide.
        - HUD doesn't believe the HFAs inspections are as good as REAC.
    - Need consistency between HUD and the contract administrator when inspections identify different issues.
    - Section 8 tenants require additional inspections over and above the HUD, contract administrator.
    - Inspections look at little things rather than the big picture; no one trusts anyone.
    - Review tax credit inspection rules and see if they are still pertinent or need revision.
    - Consider removing the requirement that the same units are not reviewed or inspected together.
    - REAC allows a sliding scale on scores. Should consider using a sliding scale on Supervisory Visits.
    - REAC score too high; generates more inspections because there is a feeling there may be fraud…
    - Delink inspection from replacement items from reserve.
    - Share reports of all funders, deferring to other lenders to complete the inspections. By in by the local agencies.
- REAC Draft legislation
    - Suggestions to improve the program. Look for copy of this legislation. Industry officials were part of this legislation.
    - Clear & consistent guidance & follow up on reviews.
    - Need REAC follow up.
- REAC Inspections
    - Inconsistencies on REAC inspections are an issue because of the following:
    - Different contractors are hired to do the work and lack oversight by HUD.
    - Some contractors are not knowledgeable of MFH & not experienced to inspect boilers, etc. Low price bidder is not always the best…
    - Inspections can hold up new properties – flags get put on the properties (2530 process)…
    - Allow for a risk base approach to determine frequency of inspections & loosen connection between inspections and 2530 process.
- Setting of Rents
    - 'Tiered rents' not allowed
    - Required costs and cushion not allowed above the line
    - Inconsistencies among offices
    - Rent Comp Study – challenge them and allow project funds to pay for doing them.
    - Uniform system for setting rents
    - Setting rents in rural markets (quality should be considered)
    - Value of the property will never be captured when the rents are very low in the market
    - Sinking funds, capitalize up front with loan funds.
    - Budget based rents and more setting
    - Setting Utility allowances
- Budget reviews / submission of financials
    - Consistence in review and material submitted

    - Timely review and approval
    - Budgeting for ‘front’ line staff & services. 401k benefits in conflict with IRS/ERISA.
    - Look at ERISA standards/requirements
    - Exempt small properties from audits – could be required every 3 years or every other year. Every other year if the investor doesn’t require it.
    - Require one audit that is accepted by all funders/investors, etc.
- Service Coordinator services
    - Consideration should be given to allow project funds to pay for a service coordinator. The reviews don’t make sense.

Re-Cap by Eric Oetjen

4 major themes, places for consistency between agencies

- Look to put in place procedural approaches to confront inconsistencies
    - Focus on process
- Standardization of forms
    - Income certification forms
    - Reduce reporting and data churn
    - Find and correct inefficiencies in funding
- Coordination across agencies
    - Better efficiency
    - Common data systems
- Beware of places where medicine is worse than disease

Things for Rental Policy WG to keep in mind

- Forms
- Inspections
- CNA’s
- Utility allowances
- Even small successes gives us momentum for greater change down the road